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6 SANTA ROSA INDIAN COMMUNITY OF THE  
7 SANTA ROSA RANCHERIA dba PALACE  
8 BINGO AND PALACE INDIAN GAMING

9 SUPERIOR COURT OF CALIFORNIA  
10 FOR THE COUNTY OF SACRAMENTO

11 FAIR POLITICAL PRACTICES  
12 COMMISSION, a state agency,

13 Plaintiff,

14 v.

15 SANTA ROSA INDIAN COMMUNITY OF  
16 THE SANTA ROSA RANCHERIA dba  
17 PALACE BINGO AND PALACE INDIAN  
18 GAMING, and DOES I-XX,

19 Defendant.

Case No.: 02AS04544

Date: February 20, 2003  
Time: 9:00 a.m.  
Dept.: 54  
Judge: Honorable Joe Gray

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
SPECIALLY APPEARING SANTA  
ROSA RANCHERIA'S MOTION TO  
QUASH SERVICE OF SUMMONS  
AND FIRST AMENDED  
COMPLAINT [C.C.P. § 418.10]

## INTRODUCTION

Plaintiff, the Fair Political Practices Commission (the "FPPC") has served a summons and first amended complaint for civil penalties under the Political Reform Act of 1974 (the "Act"), as amended, on Defendant, the Santa Rosa Indian Community of the Santa Rosa Rancheria dba the Palace Indian Gaming Center (collectively the "Tachi Tribe"). The summons and complaint purports to assert State Court jurisdiction over a federally recognized Indian tribe, its subsidiaries, officials, agents and/or employees, all of which have sovereign immunity and may not be sued without expressed consent. Pursuant to California Code of Civil Procedure section 418.10, the Summons and First Amended Complaint should be quashed on the ground of lack of jurisdiction of the court over the Tachi Tribe and this action dismissed.

## STATEMENT OF FACTS

The Santa Rosa Rancheria Tachi Yokut Tribe is a federally recognized Indian tribe. 60 Fed. Reg. 32, 9253 (February 16, 1995). The Tachi Tribe is organized under the Articles of Community Organization of the Santa Rosa Indian Community, Santa Rosa Rancheria, Kings County, California passed in 1963. The Tachi Tribe's Articles of Community Organization provides for the establishment of a Tribal government, Tribal elections and Tribal membership and a Tribal business committee. The Palace Indian Gaming Center ("The Palace") is a commercial entity owned and operated by the Tachi Tribe. The Palace is located on Tribal land in Lemoore, California.

The Tachi Tribe has established working relationships with local, State and Federal governments. With regard to the FPPC, the Tachi Tribe has voluntarily filed with the California Secretary of State semi-annual campaign statements for various reporting periods. The tribe has submitted said statements as most recently as September 25, 2002. Although these reports were not always made in the time frames specified in the Political Reform Act, the tribe has made a good faith effort to work with the Fair Political Practice Commission on government-to-government basis.

1 On or about October 7, 2002, the FPPC filed a First Amended Complaint against the Tachi  
2 Tribe alleging three violations for failure to file semi-annual campaign statements pursuant to  
3 California Government Code Section 84200 and two violations for failure to disclose late  
4 contributions in a late contribution report pursuant to California Government Code Section 84203(b).  
5 (First Amended Complaint p. 2 ¶ 7.) Plaintiffs further allege that the Tachi Tribe is a person as  
6 defined in Government Code section 82047 and a major donor committee under Government Code  
7 section 82013, subdivision (c) for calendar years 1998 and 2000. (First Amended Complaint p. 2 ¶ 7  
8 and p.3 ¶¶ 9, 10).

10 The FPPC has brought a similar action against another federally recognized tribe, the Agua  
11 Caliente Band of Cahuilla Indians. *FPPC v. Agua Caliente Band of Cahuilla Indians*, Sacramento  
12 County Superior Court, Case Number 02AS04545, presents parallel sovereign immunity and  
13 jurisdictional issues as this case. On or about November 1, 2002, the Agua Caliente Band of Cahuilla  
14 Indians' moved to quash service of summons for lack of personal jurisdiction pursuant to California  
15 Code of Procedure section 418.10. The Honorable Loren E. McMaster took Agua Caliente's motion  
16 to quash under submission after oral argument on January 8, 2003. As of January 16, 2003, the court  
17 has not made a ruling on the tribe's motion.  
18

### 19 ARGUMENT

#### 20 I. THE TACHI TRIBE AND ITS COMMERCIAL ENTERPRISES 21 ARE IMMUNE FROM SUIT UNLESS SOVEREIGN IMMUNITY 22 IS EXPRESSLY WAIVED

23 The doctrine of tribal immunity is settled law and controls this case. As a matter of federal  
24 law, Indian tribes are not subject to civil suits in any state or federal tribunal absent a clearly and  
25 unequivocally expressed waiver of the tribe's sovereign immunity. *Oklahoma Tax Comm'n v.*  
26 *Citizen Band Potawatomi Tribe of Okla.*, 489 U.S. 505, 509 (1991); *Smith v. Hopland Band of Pomo*  
27 *Indians*, 95 Cal.App.4<sup>th</sup> 1, 7 (2002); *Great Western Casinos, Inc. v. Morongo Band of Mission*  
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1 *Indians*, 74 Cal.App.4<sup>th</sup> 1407, 1419 (1999). In *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58  
2 (1978), the Supreme Court held:

3 Indian tribes have long been recognized as possessing the common law immunity  
4 from suit traditionally enjoyed by sovereign powers. This aspect of tribal  
5 sovereignty, like all others, is subject to the superior and plenary control of  
6 Congress. But without congressional authorization, the Indian nations are exempt  
7 from suit. It is settled that a waiver of sovereign immunity cannot be implied but  
8 must be unequivocally expressed.

9 (citations omitted) (emphasis supplied); see also *C & L Enterprises, Inc. v. Citizen Band Potawatomi*  
10 *Indian Tribe of Oklahoma*, 532 U.S. 411, 418 (2001). The doctrine of tribal sovereign immunity was  
11 recently reaffirmed by the Supreme Court in *Kiowa Tribe of Oklahoma v. Manufacturing*  
12 *Technologies, Inc.*, 523 U.S. 751, 755 (1998).

13 A tribe's sovereign immunity extends to commercial activities of the tribe. *Redding Rancheria*  
14 *v. Superior Court*, 88 Cal. App. 4<sup>th</sup> 384, 388 (2001); *Trudgeon v. Fantasy Springs Casino*, 71 Cal.  
15 App. 4th 632, 636 (1999). Furthermore, as long as tribal officials are acting within the scope of their  
16 lawful authority, they share the tribe's sovereign immunity from suit. *Hardin v. White Mountain*  
17 *Apache Tribe*, 779 F.2d 476, 479 (9<sup>th</sup> Cir. 1985).

18 To effectively invoke a court's jurisdiction over a tribe or causes of action alleged against a  
19 tribe, a complaint must allege facts sufficient to enable the court to find as a matter of law that the  
20 tribe has expressly waived its immunity or that Congress has abrogated that immunity. The question  
21 of tribal sovereign immunity is jurisdictional in nature. *Puyallup Tribe, Inc. v. Department of Game*,  
22 433 U.S. 165, 173 (1977); *United States v. United States Fidelity & Guaranty Co.*, 309 U.S. 506, 512  
23 (1940); *People v. Superior Court of the City and County of San Francisco*, 29 Cal. 2d 754, 756  
24 (1947). Accordingly, this issue of sovereignty must be addressed and resolved irrespective of the  
25 merits of the claim. See *California v. Quechan Tribe of Indians*, 595 F.2d 1153, 1154 (9<sup>th</sup> Cir. 1979).  
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1        There is no dispute here that the Tachi Tribe is a federally recognized Indian Tribe. (First  
2 Amended Complaint p. 2 ¶ 7.) As a sovereign nation, the Tachi Tribe is immune from suit unless its  
3 immunity is expressly waived. Because the Defendants have properly moved to quash service of the  
4 summons and complaint on the grounds of sovereign immunity, Plaintiff has the burden of  
5 affirmatively showing that this Court has jurisdiction by a waiver of sovereign immunity. It is not  
6 possible for Plaintiff to allege the requisite facts to overcome this burden, as the Tachi Tribe has not  
7 waived their sovereign immunity, has not consented to jurisdiction and does not consent to this  
8 lawsuit.  
9

## 10        II.        WAIVER OF IMMUNITY CANNOT BE IMPLIED BY THE 11        TRIBE'S POLITICAL CONTRIBUTIONS

12        The Tachi Tribe's political contributions can not evidence a waiver of immunity to enforce  
13 the Political Reform Act. The FPPC claims that the Tachi Tribe "injected itself into the political  
14 affairs of the People of the State of California by making contributions [ ] to California political  
15 candidates and committees." (First Amended Complaint p. 3 ¶¶ 9, 10.)  
16

17        In *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S. 751, 753-54  
18 (1998), a payee brought suit to recover on a promissory note executed by the Kiowa Tribe, and the  
19 tribe moved to dismiss based on sovereign immunity. The payee argued that the Kiowa Tribe should  
20 not be allowed to assert its sovereign immunity because it engaged in commercial activities. The  
21 Supreme Court responded "[t]hough respondent asks us to confine immunity from suit to transactions  
22 on reservations and to governmental activities, our precedents have not drawn these distinctions."  
23 *Kiowa Tribe*, 523 U.S. at 755. By participating in the California political process, the Tachi Tribe  
24 has not waived its sovereign immunity as to this action, any more than the Kiowa Tribe did by  
25 engaging in commercial activities. "Tribes enjoy immunity from suits on contracts, whether those  
26 contracts involved governmental or commercial activities and whether they were made on or off a  
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1 reservation. Congress has not abrogated this immunity, nor has petitioner waived it, so the immunity  
2 governs this case.” *Kiowa Tribe*, 523 U.S. at 760.

3 The Tribes inherent immunity cannot be waived by mere implication. The Tachi Tribe’s  
4 political contributions, no matter the amount, fail to meet the “explicit and unequivocal” standard  
5 required for and effective waiver of sovereign immunity. The FPPC’s only basis for a waiver of  
6 tribal immunity is with Congress.  
7

### 8 III. FPPC HAS FAILED TO DEMONSTRATE THAT THE 9 POLITICAL REFORM ACT APPLIES TO THE TRIBE

10 Disregarding the myriad of sovereign immunity issues included in the FPPC’s complaint,  
11 FPPC makes yet another fatal flaw because they do not detail how the Political Reform Act even  
12 applies to the Tribe. By its own terms the Political Reform Act applies to “persons,” which is defined  
13 as “an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company,  
14 corporation, limited liability company, association, committee, and any other organization or group  
15 of persons acting in concert.” Political Reform Act, § 82047. Nowhere in this detailed list does the  
16 word “Tribe” or “Sovereign Entity” appear. Furthermore, the common link between all these entities  
17 is that they either refer to individuals or private associations that individuals join. Consequently, the  
18 term “person” from the Political Reform Act cannot be applied to an Indian Tribe because the Tribe  
19 is not an individual, nor is the Tribe a private association.  
20

21 At minimum the Tribe is a public entity, with similar status to that of the State of Arizona.  
22 Therefore, unless the FPPC believes that it can regulate the political contribution activities of another  
23 State, such as Arizona, in the California political process, the FPPC’s case against the Tachi Tribe is  
24 misguided, if not frivolous. The only decision finding that a public entity was a “person” under the  
25 terms of the “Act” applied to the California Legislature. *Fair Political Practices Commission v.*  
26 *Suitt*, 90 Cal. App. 3d 125 (1979). However, this decision is immediately distinguishable because the  
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1 governmental entity at issue, the California Legislature, is a division of the State of California. It is  
2 only logical that the "Act" should apply to the political subdivisions of the State of California  
3 because the "Act" is a California law. Extrapolating that since the "Act" can be applied to the  
4 California legislature, it can then be applied to the Tachi Tribe, or the State of Arizona for that matter,  
5 requires some jurisprudential gymnastics that this court should hesitate before taking part of.

7 **IV. THE FPPC CANNOT ENFORCE ITS PURPORTED**  
8 **REGULATORY AUTHORITY BECAUSE OF THE TRIBE'S**  
9 **SOVEREIGN IMMUNITY**

10 While Congress unequivocally exercises plenary power over Indian Tribes, the U.S. Supreme  
11 Court has recognized a limited role for the states. For example in *Moe v. Confederated Salish &*  
12 *Kootenai Tribes*, 425 U.S. 463, 465 (1976) the State of Montana sought to apply on the tribe a  
13 substantive state law. The Montana state law was a sales tax on cigarettes sold on the tribal  
14 reservation. *Moe*, 425 U.S. at 465. The Court found that while a state could not tax cigarettes sold to  
15 tribal members on the reservation, the state could obligate the tribe to collect and remit a sales tax on  
16 cigarettes sold to non-tribal members on the reservation. *Id.* The Court carved out this narrow  
17 exception because this action only imposed a "minimal burden designed to avoid the likelihood that .  
18 . . non-Indians purchasing from a tribal seller will avoid payment of a concededly lawful tax." *Id.* at  
19 483.

20 The FPPC reporting requirements exceed this "minimum burden" requirement because it  
21 requires the Tribe to meet the exhaustive standards enunciated by the FPPC. Pursuant to the FPPC's  
22 own regulations and Proposition 34, there are a wide range of amounts that can be contributed to  
23 individual candidates and committees. Additionally, these campaign contribution limitations each  
24 toll over different time periods with some lasting an entire election cycle, while others just a calendar  
25 year. Each of time period is subject to change if the calendar year happens to coincide with an  
26 election year. See Fair Political Practices Commission, *Proposition 34: Changes to California*  
27  
28

1 *Campaign Finance Law*, at <http://www.fppc.ca.gov> (last modified Sept. 17, 2001). In all, there are  
2 thirty-nine (39) possible forms that the Tribe may be required to submit on a semi-annual basis,  
3 which is every three months, to the FPPC. See Fair Political Practices Commission, *Forms*, at  
4 <http://www.fppc.ca.gov>. This cumbersome and constantly changing reporting regimen greatly  
5 exceeds the U.S. Supreme Court's vision of a minimum burden being akin to a fixed percentage sales  
6 tax on cigarettes being sold to non-tribal members on the reservation.  
7

8 Even if it is determined that the FPPC reporting requirements are only a "minimum burden,"  
9 *Moe* only recognizes that state law might be able to regulate tribes in closely prescribed instances.  
10 The Court did not answer the question as to how the state might enforce this purported power. In  
11 *Oklahoma Tax Comm'n v. Citizen Band of Potawatomi Indian Tribe*, 498 U.S. 505 (1991), the Court  
12 decided this lingering enforcement issue.  
13

14 *Potawatomi* presented similar facts to *Moe*, except the state sought to enforce its state sales tax  
15 law by suing the tribe to collect the unremitted sales tax proceeds on the sale of cigarettes to non-  
16 tribal members on the reservation. *Id.* at 508. While the Court reiterated the tribe's underlying  
17 responsibility for abiding by this minimally burdensome state law, the Court unanimously ruled that  
18 the tribe's sovereign immunity barred any suit from the state in regards to collecting the purported  
19 amount of the sales tax due. *Id.* at 514. Specifically, the Court held that "there is no doubt that  
20 sovereign immunity bars the State from pursuing the most efficient remedy, but we are not persuaded  
21 that it lacks any adequate alternatives." *Id.* Recently, the Court reaffirmed this result in *Kiowa Tribe*  
22 *v. Manufacturing Technologies*, 523 U.S. 751, 755 (1998), in which the court stated that "there is a  
23 difference between the right to demand compliance with state laws and the means available to  
24 enforce them."  
25

26 Even though the Tribe does not concede the validity of the state substantive law being  
27 asserted by the FPPC, at best the FPPC finds themselves in a position akin to the state in *Potawatomi*.  
28



1 Therefore, in accordance with *Potawatomi*, the FPPC will not be able to overcome the Tribe's  
2 sovereign immunity through a judicial enforcement action. Instead, the FPPC must find some other  
3 alternative in which to enforce its purported regulatory authority.

4  
5 **V. THE FPPC HAS FAILED TO EXPLORE ADEQUATE**  
6 **ALTERNATIVES TO DIRECT JUDICIAL ENFORCEMENT**

7 There are a multitude of other avenues available to FPPC to seek compliance without  
8 offending the Tribe's sovereign immunity. *Potawatomi* outlines several of these alternatives for the  
9 FPPC to enforce its purported regulatory authority.

10 The most salient of these options is for the FPPC to encourage the State of California to enter  
11 into an agreement with the Tribe establishing a mutually agreeable political contribution reporting  
12 regime. This alternative is preferable over judicial action because it preserves the integrity of the  
13 government-to-government relations between the State of California and the Tachi Tribe.  
14 Additionally, agreements of this sort are not unheard of and the State of California and the Tachi  
15 Tribe already have a strong working relationship.

16 This relationship stems from the Tribal-State Compact that was entered into between the  
17 Governor of California and the Tachi Tribe in September 1999. This agreement sets forth detailed  
18 rules and procedures for regulating gaming activities on tribal lands. Most importantly, the terms of  
19 this Compact were reached through the mutual consent of both the State and the Tribe, therefore  
20 giving each entity a vested interest in seeing the agreement enforced. Up to this point, the FPPC has  
21 not approached or sought the input of the Tribe on reaching an agreement relating to political  
22 contribution reporting. The Tribe is willing to discuss on a government-to-government basis with the  
23 State of California mutually agreeable options for resolving this issue.

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25  
26 Lastly, in the event that a mutually agreeable solution cannot be reached, the FPPC could  
27 encourage the U.S. Congress to pass appropriate legislation waiving the Tribe's sovereign immunity  
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1 on this particular issue. Then and only then would this Court have the requisite jurisdictional basis to  
2 hear this case.

3  
4 CONCLUSION

5 At no time has the Tachi Tribe waived its sovereign immunity and consented to State court  
6 jurisdiction. In addition, the FPPC failed to demonstrate that the Political Reform Act even applies to  
7 the Tachi Tribe. For the above reasons, the tribe's motion under section 418.10 of the Code of Civil  
8 Procedure to quash service of the summons and complaint on grounds of tribal sovereign immunity  
9 should be granted, and the action should be dismissed.

10 Dated: January 17, 2003

11 MONTEAU & PEEBLES LLP

12  
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